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subsequently incorporated, of a similar name for the purpose of leading the public, from whom it expects support by way of donations, to believe that it represents the former association.

As to protection of corporate names against infringement by subsequently incorporated associations, see *American Clay Mfg. Co. v. American Clay Mfg. Co. of N. J.* (Pa.), 47 Atl. 936; 6 Va. Law Reg. 795.

FIDUCIARY BONDS—LIABILITY OF SUBSTITUTED SURETIES.—Sureties on a guardian's bond, taken upon motion of a surety on a former bond for the purpose of procuring his release, are held, in *Abshire v. Salyer* (Ky.), 56 L. R. A. 936, to be liable, equally with the surety on the former bond, for past as well as future defalcation of the guardian, although the motion seeks to relieve the former surety from future liability only.

The subject is regulated by statute in Virginia. With us, where a *new* bond is given, the sureties in the old bond are discharged from future liability; if an *additional* bond be given, the old sureties remain liable for past defaults, while as to the future both sets of sureties become jointly liable. Va. Code, sec. 179.

CRIMINAL LAW—COMMENT OF PROSECUTING ATTORNEY ON FAILURE OF ACCUSED TO TESTIFY.—Where a State's attorney has stated in his closing argument that the accused had seen fit to avail himself of his privilege not to go upon the stand, and the presiding judge at once said to the attorney that he ought not to have referred to the fact; that the statute provided that the jury shall pay no attention to it; that there was no reason why the respondent should testify; that the State must make out its case, and that the fact that the respondent had not testified could not help the State's case at all; it was *Held*, That the action of the trial court cured the error. *State v. Young* (Vt.), 52 Atl. 1047. Citing *Magoon v. R. R. Co.*, 67 Vt. 177; *Machine Co. v. Holden*, 73 Vt. 396.

We have recently noted a similar ruling by the same court: *Lockwood v. Fletcher*, 52 Atl. 119, 8 Va. Law Reg. 383. An examination of the authorities discloses a wide difference of opinion among the courts of the several States. If the question has been ruled upon in Virginia, the decision has escaped our attention. The Supreme Court of the United States, in *Wilson v. United States*, 149 U. S. 60, recognized the ruling of the principal case, namely, that if the trial court promptly and unequivocally directed the jury to disregard the remarks of the prosecuting attorney, a judgment of conviction would not be reversed; but it did reverse the judgment in that case because the presiding judge had said only, "I suppose the counsel should not comment upon the defendant not taking the stand."

HEARSAY EVIDENCE—WAIVER OF OBJECTION—PROBATIVE FORCE.—In an action against a railway company to recover damages for personal injuries, defendant was permitted, without objection, to introduce hearsay testimony as to declarations of the engineer, made after the accident. These declarations, if given the probative force of ordinary sworn testimony, were sufficient to authorize a peremptory instruction to the jury to find for the defendant, and the lower court instructed accordingly. *Held*, that it was error to attach any probative force to such hearsay testimony, standing alone, even though introduced

without objection—*Eastick v. Southern Ry. Co.* (Ga.), 42 S. E., 499. Lumpkin, P. J., in delivering the opinion, said in part :

“Such testimony, save as to well-defined exceptions, is inadmissible for any purpose, because it is wholly without probative value. The fact that it is admitted cannot give it any such value. In other words, testimony of this character which does not come within any of the exceptions just referred to is, in legal contemplation, wholly worthless, and has been so regarded and treated through all the ages of the English law. While a party who permits hearsay testimony to be introduced without objection, or who has himself introduced such testimony, will not be heard to complain of the fact that it went to the jury, and must suffer whatever disadvantage may come of their giving it sufficient weight to turn the scale against him when there is enough legal testimony before them to support a finding in favor of his adversary, it will not do to say that such a finding, resting upon hearsay testimony alone, can lawfully stand merely because the losing party did not object to such testimony when offered by his adversary, or himself introduced the same. No plaintiff should ever, under any circumstances, lose his case when there is evidence to warrant a recovery by him, and the verdict or judgment in favor of the opposite party has nothing upon which to rest but inadmissible hearsay testimony.

“It ought not to require the citation of authority to establish the soundness of these time-honored and thoroughly settled propositions. We will, however, as it happens to be before us, call attention to the case of *Bank v. Woody*, 10 Ark. 638, which upon its facts is closely in point, and in which it was held that: ‘Hearsay is inadmissible, not only because it supposes better evidence in existence, but on account of its intrinsic weakness and incompetency to satisfy the mind; and the admission of this kind of evidence without objection does not give it any new attribute or weight, its nature and quality remaining the same so far as its intrinsic weakness and incompetency to satisfy the mind are concerned.’ In the opinion delivered by Mr. Justice Scott, he makes it very clear that ordinary hearsay testimony should not be treated as sufficient to establish any fact.”

INJUNCTION BONDS—ATTORNEY'S FEE AS ELEMENT OF DAMAGE.—This much mooted question has recently been passed upon by the Supreme Court of Oklahoma Territory, which follows the rule in *Oelrichs v. Spain*, 15 Wall. 211, that attorney's fees are not a proper element of damage to be proven in an action upon an injunction undertaking. *Frantz v. Taylor*, 69 Pac. 794. While it does so because, being a territorial court, the decision of the Supreme Court of the United States is binding upon it, even where the case does not involve the jurisdictional amount requisite for an appeal, it is manifest that the court approves the rule upon its merits.

In Virginia the question was directly passed upon in *Wisecarver v. Wisecarver*, 97 Va. 452, 5 Va. Law Reg. 462, in which *Oelrichs v. Spain* was followed. See also 5 Va. Law Reg. 565; *Burruss v. Hines*, 94 Va. 413, where it was held that attorney's fees incurred by a plaintiff in obtaining an injunction against a tort, could not be recovered as damages in a subsequent action for damages for the tort.

In West Virginia, the opposite view was approved in *State v. Medford*, 34 W.